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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/791,189

03/01/2004

Charles John Call

MESO0070

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25268

7590

10/02/2007

LAW OFFICES OF RONALD M ANDERSON

600 108TH AVE, NE

SUITE 507

BELLEVUE, WA 98004

EXAMINER

RAMILLANO, LORE JANET

ART UNIT

PAPER NUMBER

1743

MAIL DATE

DELIVERY MODE

10/02/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/791,189

Applicant(s)

CALL ET AL.

Examiner

Lore Ramillano

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-7,21-24,29-38 and 43-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-7,21-24,29-38 and 43-45 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8/7/07 has been entered.

Status of Claims

2. In applicant's reply filed on 8/7/07, applicant amended claims 1, 3-4, 6, 21-22, 24, 29, 31-38, and 42; and cancelled claims 8-16, 25-28, and 39-42. Claims 1, 3-7, 21-24, 29-38, 43-45 are pending and under examination.

Response to Amendment

Double Patenting

3. The provisional rejection of claims 1 and 21 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 44 and 45 of copending Application No. 10/791057 is withdrawn since applicant filed a terminal disclaimer on 8/7/07.

Claim Rejections - 35 USC § 112

4. The rejection of claims 7 and 24 under 35 U.S.C. 112, second paragraph, is withdrawn.

Prior art rejections

5. The rejections over the prior art are maintained.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. **Claims 1, 4-6, and 32-34** are rejected under 35 U.S.C. 102(b) as being anticipated by Allen (US 4987286).

Allen discloses a device comprising: a regenerable collection surface; a surface regenerator configured to remove particles from the regenerable collection surface; a detector capable of sensing a biological signature in the spot; a liquid coating applicator; and a mechanical homing sensor that positions the regenerable collection surface relative to the detector (i.e. column 7, line 43 to column 8, line 17).

8. **Claims 21-24 and 37-38** are rejected under 35 U.S.C. 102(b) as being anticipated by Call et al. ("Call," US Pub. No. 2002/0124664).

Call teaches a method comprising: depositing airborne particles on a regenerable collection surface, measuring a biological signature present in the particles comprising the spot, determining a concentration of the immobilized airborne biological particles, regenerating the regenerable collection surface by removing particles from the regenerable collection surface (i.e. [0111]-[0121]); and activating an alarm if the concentration of particles equals or exceeds the predetermined criteria (i.e. [0187]).

Call further teaches: the step of depositing results from an inertial impaction of the particles on the regenerable collection surface (i.e. [0144]); that the biological signature is an autofluorescence (i.e. [0189]); and directing a stream of high velocity air towards the regenerable collection surface to dislodge the particles deposited on the regenerable collection surface (i.e. [0122]).

9. **Claims 1, 4-6, and 32-34** are rejected under 35 U.S.C. 102(e) as being anticipated by Uziel et al. ("Uziel," US 6949147).

Uziel discloses a device comprising: a regenerable collection surface; a surface regenerator configured to remove particles from the regenerable collection surface; a detector capable of sensing a biological signature in the spot; a liquid coating applicator; and a mechanical homing sensor that positions the regenerable collection surface relative to the detector (i.e. column 6, lines 1-11; and Fig. 9).

10. **Claims 1, 4-6, 32-34, and 43-44** are rejected under 35 U.S.C. 102(e) as being anticipated by Uziel (US 6908567).

Uziel discloses a device comprising: a regenerable collection surface; a surface regenerator configured to remove particles from the regenerable collection surface; a detector capable of sensing a biological signature in the spot; a liquid coating applicator; a mechanical homing sensor that positions the regenerable collection surface relative to the detector (i.e. column 2, lines 40-51); and a particle counter (i.e. Fig. 9).

11. **Claims 1, 4-6, and 32-34** are rejected under 35 U.S.C. 102(e) as being anticipated by Allen (US 6805751).

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Allen discloses a device comprising: a regenerable collection surface; a surface regenerator configured to remove particles from the regenerable collection surface; a detector capable of sensing a biological signature in the spot; a liquid coating applicator; and a mechanical homing sensor that positions the regenerable collection surface relative to the detector (i.e. column 2, lines 40-51).

12. **Claims 1, 3-7, 32 and 33** are rejected under 35 U.S.C. 102(e) as being anticipated by Bryden et al. ("Bryden," WO 03/089907 A1).

Bryden discloses a device comprising: a regenerable collection surface, which is part of an impaction plate (i.e. 26, fig. 2, [0035]); a surface regenerator (i.e. [0033]) configured to remove particles from the regenerable collection surface; a detector (i.e. [0027]) capable of sensing a biological signature in the spot.

Bryden further discloses the following: a spotting nozzle configured to direct an air stream towards the regenerable collection surface (i.e. 36, fig.2); means for directing energy to the particles collected upon the regenerable collection surface to dislodge particles deposited thereon; means for directing energy to the regenerable collection surface to dislodge particles deposited thereon (i.e. [0005]); a liquid coating applicator configured to moisten the regenerable collection surface prior to collecting particles, thereby enhancing a collection efficiency of the regenerable collection surface (i.e. [0005]); and a MALDI mass spectrometer (i.e. [0027]).

13. **Claims 1, 3-7, 29-30, 33-36, and 43-45** are rejected under 35 U.S.C. 102(e) as being anticipated by Murray et al. ("Murray," WO 03/089661 A1).

Murray discloses a device comprising: a regenerable collection surface, which is part of an impaction plate (i.e. [0036]); a surface regenerator (i.e. [0037], [0039]) configured to remove

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particles from the regenerable collection surface; a detector (i.e. [0040]) capable of sensing a biological signature in the spot.

Murray further discloses the following: a spotting nozzle configured to direct an air stream towards the regenerable collection surface (i.e. 36, fig.2); a fluorescence detector, further comprising an excitation light source configured to emit excitatory radiation that is directed towards the particles collected upon the regenerable collection surface (i.e. [0040]); a biological signature consisting of an autofluorescence (i.e. [0040]); a dichroic mirror that substantially reflects the excitatory radiation (i.e. fig. 3, [0041]-[0044]); an excitation filter disposed between the excitation light source and the dichroic mirror; an emission filter disposed between the dichroic mirror and the fluorescence detector (i.e. fig. 3, [0041]-[0044]); a liquid coating applicator configured to moisten the regenerable collection surface prior to collecting the particles (i.e. [0036]-[0037]); producing an alarm signal (i.e. [0050]); a processor configured to activate an air analysis device to obtain and analyze a sample of particles from the same general volume of air that provided the particles originally deposited on the regenerable collection surface (i.e. [0050]); a particle counter (i.e. [0052]); and adjacently positioned aerosol sampler and an adjacently positioned aerosol analyzer (figs. 2 and 3).

Claim Rejections - 35 USC § 103

14. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

15. **Claim 31** is rejected under 35 U.S.C. 103(a) as being unpatentable over Bryden in view of Lin et al. ("Lin," US 6193587).

The disclosure of Bryden is indicated above. Bryden does not specifically disclose having a brush that regenerates the regenerable collection surface. Lin discloses an apparatus for cleaning particles from the surface of a polishing pad (i.e. column 5, lines 13-15). It would have been obvious to a person of ordinary skill in the art to modify Bryden's surface regenerator by incorporating a brush as an alternate or additional means for removing particles from the regenerable collection surface because it ensure that the excess fluid and/or airborne particles accumulated on the regenerable collection surface are removed from the regenerable collection surface before another new batch of airborne particles impinge upon the regenerable collection surface.

Response to Arguments

16. Applicant's arguments filed 8/7/07 have been fully considered but they are not persuasive.

Rejections by Allen ('286 and '751)

In response to applicant's argument that '286 and '751 do not teach or suggest a detector nor teach or suggest a regenerable solid collection surface, as recited in claim 1, examiner disagrees. It appears that applicant's arguments are based on 35 USC 103 standard of analysis since applicant asserts that '286 and '751 are no longer analogous art and do not teach or suggest the limitations in claim 1. This standard of analysis is not applicable to the rejections by '286 and '751 because these rejections are based on 35 USC 102.

Rejections by Uziel ('147 and '567)

In response to applicant's argument that '147 and '567 are not analogous art and do not teach or suggest a detector, as recited in claim 1, examiner disagrees. It appears that applicant's

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arguments are based on 35 USC 103 standard of analysis since applicant asserts that '286 and '751 are not analogous art and do not teach or suggest the limitations in claim 1. This standard of analysis is not applicable to the rejections by '147 and '567 because these rejections are based on 35 USC 102.

Rejection by Bryden

In response to applicant's argument that Bryden does not teach or suggest a surface regenerator, as recited in claim 1, and that Bryden's invention is not equivalent to applicant's invention, examiner disagrees. It appears that applicant's arguments are based on 35 USC 103 standard of analysis since applicant asserts that Bryden does not teach or suggest the limitations in claim 1 and argues about equivalency. This standard of analysis is not applicable to the rejection by Bryden because this rejection is based on 35 USC 102.

Rejection by Murray

In response to applicant's argument that Murray does not teach or suggest a surface regenerator or a detector, as recited in claim 1, examiner disagrees. It appears that applicant's arguments are based on 35 USC 103 standard of analysis since applicant asserts that Murray does not teach or suggest the limitations in claim 1 and argues about one of ordinary skill in the art. This standard of analysis is not applicable to the rejection by Murray because this rejection is based on 35 USC 102.

Rejection by Call

In response to applicant's argument that Call does not disclose an equivalent method to that recited in claim 21 and that there would be no basis for a person of ordinary skill in the art to make changes, examiner disagrees. It appears that applicant's arguments are based on 35 USC

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103 standard of analysis since applicant asserts that Call does not teach or suggest the limitations in claim 1, about one of ordinary skill in the art, and about equivalency. This standard of analysis is not applicable to the rejection by Call because this rejection is based on 35 USC 102.

103 rejection

In response to applicant's argument that the rejection of dependent claim 31 is patentable for the reasons discussed above in regard to independent claim, examiner disagrees for the reasons stated above.

Furthermore, because applicant's traversal against the above rejection is conclusory, examiner's rejection is maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lore Ramillano whose telephone number is (571) 272-7420. The examiner can normally be reached on Mon. to Fri.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571) 272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would

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like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Lore Ramillano
Examiner
Art Unit 1743


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